



May 19, 2022

**VIA EMAIL ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

Vanessa Countryman  
Secretary  
US Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Notice of Proposed New Rule 3a5-4 under Exchange Act Section 3(a)(5) Regarding the Definition of “Dealer”; Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer (Release No. 34-94524; File No. S7-12-22; [Fed. Reg. No. 2022-01975])**

Dear Ms. Countryman:

This letter is submitted on behalf of the Blockchain Association, a member led, member driven organization dedicated to improving the public policy environment for crypto networks through innovation, collaboration, leadership, networking, diversity and representation. The Blockchain Association writes in response to the notice of proposed rule of the Securities and Exchange Commission (the “SEC”) to further define the phrase “as a part of a regular business” as used in the statutory definition of “dealer” under Section 3(a)(5) (“Section 3(a)(5)”) of the Securities Exchange Act of 1934 (the “Exchange Act”).<sup>1</sup>

The Press Release states that the comment period will last for the longer of sixty days after publication of the proposed rulemaking on the SEC’s website or 30 days after publication in the Federal Register.<sup>2</sup> The effective comment period is the former, as the Release states that the deadline for comments is May 27, 2022. As noted by the Office of the Federal Register, comment periods for proposed rules by federal agencies typically range from thirty to sixty days. For complex rulemakings, however, agencies can provide for comment periods up to 180 days.<sup>3</sup> Indeed, in connection with its recent “exchange” definition proposal, which could have massive impacts on the digital asset sector, the SEC seems to have acknowledged that even eighty-two days after the publication of the proposal on the SEC’s website was an insufficient comment period, as it recently reopened the comment period.<sup>4</sup>

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<sup>1</sup> See Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer, Fed. Reg. No. [2022-01975] (Mar. 28, 2022) (the “Proposal”).

<sup>2</sup> See SEC Proposes Rules to Include Certain Significant Market Participants as “Dealers” or “Government Securities Dealers” [2022-54] (Mar. 28, 2022) (available at <https://www.sec.gov/news/press-release/2022-54>).

<sup>3</sup> Office of the Federal Register, *A Guide to the Rulemaking Process* (available at [https://www.federalregister.gov/uploads/2011/01/the\\_rulemaking\\_process.pdf](https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf)).

<sup>4</sup> The “exchange” definition proposal was released on January 26, 2022 and the comment period ended on April 18, 2022. See Reopening of Comment Periods for “Private Fund Advisers; Documentation of Registered Investment Advisers Compliance Reviews” and “Amendments Regarding the Definition of

We believe that the scope of the Release, and the wide-ranging impact of the proposed rulemakings contemplated therein, merit more consideration than can be provided in a sixty-day period. There is only one mention of digital assets in the Release in Footnote 36, and there is no mention of digital assets in the cost-benefit analysis. We believe that potential consequences of the Release on digital asset market participants present complex issues that merit thoughtful consideration and discussion with the participation of industry stakeholders. We believe that the proposed 60-day period is manifestly insufficient to respond thoughtfully to issues such as these, as well as to identify and respond to other potential issues that may be contained in this significant Release. For example, a 60-day comment period may make it infeasible for industry participants or commentators to engage experts to analyze the potential costs of applying these rules to the crypto industry.

Given the length of the Release, and the wide-ranging potential implications of the proposed rulemaking, the Blockchain Association requests, on behalf of its members, that the SEC extend the comment period to a minimum of ninety days from the date of publication in the Federal Register so that stakeholders can fully analyze the Release and provide thoughtful commentary in response to the proposed rulemaking.

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We greatly appreciate the opportunity to provide comments with respect to this important rule-making effort and thank the SEC staff for its consideration in extending the comment period so that we may offer comments that allow the SEC to give its proposed rulemaking the consideration it deserves and requires. Latham & Watkins LLP and the staff of the Blockchain Association are available to meet and discuss these matters with the SEC and to respond to any questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'J. Chervinsky', with a stylized flourish at the end.

Jake Chervinsky  
Head of Policy

cc: Benjamin Naftalis  
Douglas K. Yatter  
Stephen Wink  
LATHAM & WATKINS LLP

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'Exchange' and Alternative Trading Systems (ATSS) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities," Release Nos. 34-94868 (May 9, 2022).